



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

[SATS NO. TN-001-FOR; OSM 2011-0010]

Tennessee Abandoned Mine Land Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on program amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Tennessee Abandoned Mine Land (AML) Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Tennessee has submitted the amendment to reflect statutory, regulatory, policy, procedural, and organizational changes that have occurred since 1984, when the State's AML program was affected by the withdrawal of the State's regulatory program.

This document gives the times and locations that the Tennessee AML reclamation plan is available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., local time [Insert date 30 days after date of publication in the Federal Register]. If requested, we will hold a public hearing on [Insert date 25 days after date of publication in the Federal Register]. We will accept requests to speak until 4:00 p.m., local time on [Insert date 15 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by “TN-001-FOR; Docket ID: OSM-2011-0010” by either of the following two methods:

Federal eRulemaking Portal: www.regulations.gov. The proposed rule has been assigned Docket ID: OSM-2011-0010. If you would like to submit comments through the Federal eRulemaking Portal, go to www.regulations.gov and follow the instructions.

Mail/Hand Delivery/Courier:

Mr. Earl D. Bandy Jr., Field Office Director
Knoxville Field Office

Office of Surface Mining Reclamation and Enforcement
701 Locust Street,
Second Floor
Knoxville, TN 37902

Mr. Tim Eagle, Manager
Land Reclamation Section
Knoxville Field Office
Department of Environment and Conservation
2711 Middlebrook Pike
Knoxville, TN 37921

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: In addition to obtaining copies of documents at www.regulations.gov, information may also be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM’s Knoxville Field Office.

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FOR FURTHER INFORMATION CONTACT: Earl D. Bandy Jr., Telephone: (865)

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SUPPLEMENTARY INFORMATION:

- I. Background on the Tennessee Program
- II. Description of the Request
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Tennessee Program

Regulatory Program (Title V): Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Tennessee program on August 10, 1982. *See 47 FR 34753.*

Withdrawal of Tennessee’s Regulatory Program: Because of the State’s failure to effectively implement, administer, maintain, or enforce its program, the Director of OSM on April 8, 1983, notified the Governor of the problems and sought corrective measures pursuant to 30 CFR Part 733. OSM subsequently concluded that the State failed to adequately indicate its intent and capability to implement, maintain, and enforce its regulatory program and, on April 18, 1984, OSM substituted direct Federal enforcement of the inspection and enforcement portions of the TN regulatory program pursuant to 30 CFR 733.12. *See 49 FR 15496.*

On May 16, 1984, the State repealed most of the Tennessee Coal Surface Mining Law of 1980 effective October 1, 1984, and OSM withdrew approval of the Tennessee performance regulatory program in full, effective October 1, 1984. *See 49 FR 38874.*

Abandoned Mine Lands Program (Title IV): Title IV of the Surface Mining Act establishes an Abandoned Mine Land (AML) program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or Federal law. Title IV provides that a state with an approved surface mining regulatory program may have an AML program approved which gives it the responsibility and primary authority to implement the plan. On August 10, 1982, Tennessee's reclamation plan was approved. *See 47 FR 34757.*

Suspension of Tennessee's AML Program: Because Tennessee's regulatory program was withdrawn, Tennessee's AML program was also affected. Section 405 (c) of the Act provides that the Secretary shall not approve, fund, or continue to fund a state AML program unless that state has an approved state regulatory program pursuant to Section 503 of the Act. Regulations implementing this provision were formerly found at 30 CFR 884.11, State Eligibility.

The requirements of 30 CFR 884.16, Suspension of Plan, provide that upon withdrawal of regulatory program approval, the Director must suspend the AML Plan. Formal suspension of a state's Reclamation plan results in the following consequences: 1) the state is no longer eligible to receive the 50% allocation of the AML funds collected within the state; 2) funds which have been allocated to the state but have remained unexpended for three years may be withdrawn by the Director and used in any eligible area in the country, and 3) OSM will conduct only limited reclamation efforts in the state addressing only the highest priority problems which threaten the public health and safety. On October 5, 1984, OSM assumed responsibility and authority for carrying out the provisions of Title IV within the state of Tennessee. *See 49 FR 15505.*

Since that time, Tennessee no longer received an annual distribution of Federal funds for the purposes of carrying out an AML program (including administrative costs). Emergency and non-emergency projects in Tennessee were addressed by OSM, with OSM utilizing Federal contracts or cooperative agreements between OSM and Tennessee to procure construction services.

Tennessee as a Minimum Program State: As a result of the AML Reauthorization Bill of 2006 (2006 SMCRA Amendment), the Congress authorized Tennessee to have an AML program and considered it a minimum funded program state, without a permanent regulatory program. The Bill provided that beginning in FY2008, Tennessee would be able to expend funds for reclamation of inventoried projects in accordance with the priorities of Section 403(a)(1) and (2). Since Tennessee is now authorized as a

“minimum program state,” it is also eligible to receive funding to assume primary responsibility for administering the emergency program within the state.

Updated Federal regulations: As stated above, at the time of Tennessee’s regulatory program withdrawal, the Federal regulations at 30 CFR 884.16 precluded a regulatory authority from receiving Federal funding for an AML program if its regulatory program was withdrawn. However, the 2006 SMCRA Amendment granted exceptions from that rule. The Federal regulations at 30 CFR 884.11 were amended on November 14, 2008, and now provide that the states of Tennessee and Missouri are exempt from the requirement for an approved state regulatory program by Section 402(g)(8)(B) of SMCRA and are eligible to have an AML reclamation plan and funding. *See 73 FR 67642.*

II. Description of the Request

By letter dated April 6, 2011, (Administrative Record Number TN-1671), Tennessee sent us a request to approve its Tennessee Reclamation Plan amendment. Currently, 30 CFR 942.20, Approval of Tennessee reclamation plan for lands and waters affected by past coal mining, refers to the Tennessee Reclamation Plan as submitted on March 24, 1982, as being the currently approved plan of record. This amendment seeks to address Federal and state changes that occurred since 1984, when the State’s regulatory program was withdrawn.

This amendment request formalizes discussions that took place between OSM and the State since the 2006 SMCRA Amendment. In a letter dated August 6, 2007 (Administrative Record No. TN-1670), OSM noted that an AML plan revision was necessary to update the reclamation plan of record to include any Federal and state changes that had occurred since 1984 as further described below:

Federal Statutory Changes: There were three statutory changes and one Presidential order that occurred since TN forfeited primacy in 1984 that had an impact on the effectiveness of the current AML plan of record: 1) The Abandoned Mine Reclamation Act of 1990: This bill revised the AML program to address interim program sites, insolvent sureties, AMD and mined land set-aside funds, fund objectives and priorities, and other issues; 2) Energy Policy Act of 1992: This bill revised the AML program in areas of coal remining, and abandoned coal refuse sites, as well as cooperative agreements for coal formation fire control projects; and 3) AML Reauthorization Bill of 2006: This bill extended the AML fee collection authority from 2007 to 2021 and revised the AML program in the areas of appropriation of funds, allocation formulas, fund objectives and priorities, AMD set aside accounts, water supply projects, state share payments, remining incentives, and minimum program funding to include the State of Tennessee.

Federal Regulatory Changes: Changes made to the Federal regulatory provisions, as a result of the aforementioned statutory changes, affecting Tennessee's current Reclamation Plan of record are as follows: 30 CFR Part 872, Moneys Available to

Eligible States and Indian tribes; Part 874, General Reclamation Requirements; Part 876, Acid Mine Drainage Treatment and Abatement Program; Part 879, Management and Disposition of Lands and Water; Part 882, Reclamation on Private Land; Part 884, State Reclamation Plans; and Part 886, Reclamation Grants for Uncertified States and Indian Tribes. These regulation changes involved changes to the definitions of eligible lands and water, interim program eligibility requirements, reclamation objectives and priority designations, reclamation contractor responsibilities, state reclamation grant reporting, grant requirements, water supply projects, AMD set-aside accounts, and government-financed construction projects. *See 73 FR 67638.*

Presidential Order – Grants management: Other Federal changes affecting Tennessee's current Reclamation Plan of record include changes to grant laws, policies, and procedures that have occurred since 1984. Currently, Federal grant funds (including AML grant funds) are governed by the guidelines issued by the President's Office of Management and Budget (OMB). On March 12, 1987, the President directed all affected agencies to issue a common grants management rule to adopt Government-wide terms and conditions for financial assistance to state and local governments (referred to as the Grants Management Common Rule). The OMB Circular A-102 was revised in 1988 to provide additional guidance to Federal agencies. The Department of the Interior issued its common rule on March 11, 1988, at 43 CFR Part 12.

The Grants Management Common Rule allows states to use their own procedures to manage their financial management, equipment, and procurement systems. OMB

Circular A-102 was revised on October 14, 1994, to include updated direction on: 1) implementation of the metric system; 2) review of infrastructure investment; 3) implementation of the Resource Conservation and Recovery Act; and 4) public announcement of the amount of Federal funds used in certain contract awards. As a result of the Presidential Order, the grants management guidelines were codified at 43 CFR Part 12 and extensive revisions were made to OSM's Federal Assistance Manual (FAM). In addition to the changes resulting from the Common Rule, OSM had simplified the AML grant process in 1993 and these changes were also incorporated into the FAM.

State Statutes and Regulations: The current Tennessee AML Reclamation Plan on record references Tennessee statute (Tennessee Coal Surface Mining Law of 1980) and regulations (Chapter 0400-1-24 of the Rules of the Tennessee Department of Conservation, Division of Surface Mining). Any changes to state statutes and regulations regarding the AML program should be reviewed to assure that they are not inconsistent with Federal statutes and regulations.

State Policies, Procedures, and Administrative and Organization: Federal regulations at 30 CFR 884.13 outline the content of the AML reclamation plans. This includes state agency designations and legal opinions; description of the policies and procedures to be followed by the designated agency in conducting the reclamation program; and a description of the administrative and management structure to be used in conducting the

reclamation program. These designations, opinions, policies, procedures (including coordination procedures), and organizational entities should be updated as necessary.

Content of the Revised Tennessee Reclamation Plan: Tennessee has submitted an updated reclamation plan in an effort to address the concerns noted above. The revised plan includes the following sections: Governor's Letter of Designation; Legal Opinions; Purpose of the State Reclamation Program; Ranking and Selection; Coordination with Other Programs; Land Acquisition, Management and Disposal; Reclamation on Private Land; Rights of Entry; Public Participation Policies; Organization; Staffing Policies; Purchasing and Procurement; Accounting System; Description of Problems Occurring on Lands and Waters; Reclamation Proposals; Economic Base; Aesthetic, Historical or Cultural, and Recreation Values; and Endangered and Threatened Plant, Fish, Wildlife and Habitat. The revised plan replaces the old plan and is revised in parts; redesignated in parts; removed in parts and added in parts. Due to the extensive overhaul and a total rewrite of the plan, a section by section description of changes was not included.

Below includes some of the changes made on behalf of Tennessee to address OSM recommendations noted above:

The plan was revised to indicate that the division of Water Pollution Control, Land Reclamation Section is now responsible for ensuring AML reclamation, managing major functions, collecting data entered into AML inventory system pursuant to OSM directives, developing policies and procedures, and requesting legal assistance from General Counsel

who determines eligibility. A revised organizational chart was also included.

With regard to AML problem eligibility, Tennessee has added that AML problems include landslide hazards, highwalls, flooding, erosion, sedimentation, acid drainage, coal seam/refuse fires, subsidence, water loss, dangerous impoundments, abandoned structures/equipment, open mine portals, and open mine shafts and refuse areas and revised priority designations. A statement was also made that written approval will be obtained from OSM before commencement of AML project construction.

With regard to reclamation on private land and rights of entry, the plan was revised to include the state's acquisition, management, and disposal of land disturbed by past mining; address appraisals on private land; revise written consents regarding entry to private lands; and add a procedure for when written consents cannot reasonably be obtained or the owner is unknown and/or cannot be located.

References to OMB Circular A-102 were removed and a statement that purchasing and procurement systems used for all contracts conform to the requirements of the Grants Management Common Rule was added. In addition, statements regarding the procurement approval process, competition, small business utilization, advertising, bidder eligibility, and independent audits are also included.

With regard to public participation, the plan was revised to provide that the State will use OSM's public participation process; public notices will be placed in local newspapers; and

public participation policies are provided during the construction of the annual work plan.

III. Public Comment Procedures

Under the provisions of 30 CFR 884.14 and 884.15, we are seeking your comments on whether the submission satisfies the applicable plan approval criteria of 30 CFR 884.13.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (see DATES) or sent to an address other than those listed above (see ADDRESSES) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment

– including your personal identifying information – may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., local time [Insert date 15 days after date of publication in the Federal Register]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under ADDRESSES. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a state submits a plan amendment to OSM for review, our regulations at 30 CFR 884.14 and 884.15 require us to hold a public hearing on a plan amendment if it changes the objectives, scope or major policies followed, or make a finding that the State provided adequate notice and opportunity for public comment. Tennessee is a Federal program and this amendment seeks to reinstate Tennessee's AML plan therefore we are publishing

a Federal Register notice indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 942

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,
Regional Director, Appalachian Region

December 6, 2011_____
Date

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